Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

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This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decision

(T.D. 84-83)

Approval of Public Gauger Performing Gauging Under Standards and Procedures Required by Customs

Notice is given pursuant to the provisions of section 151.43, Customs Regulations (19 CFR 151.43), that the application of Bay Area Services, Inc., P.O. Box 1650, Texas City, Texas 77590, to gauge imported petroleum and petroleum products in the Southwest Customs Region, in accordance with the provisions of section 151.43, Customs Regulations, is approved.

Dated: April 5, 1984.

DONALD W. LEWIS,
Director,
Entry Procedures and Penalties Division.

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
James L. Watson
Nils A. Boe
Gregory W. Carman
Jane A. Restani

Senior Judges

Frederick Landis

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 84-24)

ALLIS-CHALMERS CORPORATION, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 82-8-01107

Before: CARMAN, *Judge.*

MEMORANDUM OPINION AND ORDER

[Plaintiff's motion for judgment on the pleadings granted.]

(Dated March 23, 1984)

Rode & Qualey, (Patrick D. Gill on the motion) for the plaintiff.
Richard K. Willard, Acting Assistant Attorney General; *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Barbara M. Epstein* on the motion) for the defendant.

CARMAN, *Judge:* This matter is before me on plaintiff's motion for judgment on the pleadings and defendant's cross-motion for summary judgment. There are no genuine issues of material fact. Jurisdiction lies pursuant to 28 U.S.C. § 1581(a)(Supp. V 1981).

The plaintiff imported tractor seat suspensions from West Germany on March 17, 1982, the classification of which is at issue in this case. The imported tractor seat suspensions were classified as parts of furniture designed for motor vehicle use at 3.7 percent ad valorem under Item 727.06 of the Tariff Schedules of the United States (TSUS).[1] Plaintiff claims that the proper classification of this merchandise is as parts of tractors suitable for agricultural use, free of duty under item 692.34, TSUS.[2] Defendant argues that the imported merchandise is more specifically provided for as parts of furniture designed for motor vehicle use under item 727.06, TSUS, although it admits that the imported tractor seat suspensions are parts of tractors suitable for agricultural use. Plaintiff asserts that Congress did not intend the merchandise in question to be within the purview of item 727.06, TSUS.

The parties have agreed that if the merchandise is described by both TSUS item 727.06 and TSUS item 692.34, the merchandise is more specifically provided for under TSUS item 727.06, the provision under which it was classified. The question before this court is

[1] Item 727.06, TSUS, provides:
Furniture designed for motor-vehicle use, and parts therof ..... 3.7% ad val.
[2] Item 692.34, TSUS, provides:
Tractors suitable for agricultural use, and parts thereof ..... Free

whether the imported tractor seat suspensions, which are conceded to be parts of tractors suitable for agricultural use, fall within the meaning of the provision for parts of furniture designed for motor vehicle use, item 727.06, TSUS.

Plaintiff argues that relevant case law and the legislative history establish that Congress intended item 727.06, TSUS, to apply only to articles that would have been classified as automotive parts under schedule 3, paragraph 369(c), of the Tariff Act of 1930, as amended, ch. 497, § 1, sched. 3, ¶ 369(c), 46 Stat. 590, 625. Since agricultural tractor parts were previously classifiable under schedule 16, paragraph 1604, of the Tariff Act of 1930, and not under paragraph 369(c), plaintiff concludes that the imported tractor seat suspensions are not designed for motor vehicle use within the intention of item 727.06. Defendant argues in a slightly different way, contending that tractors are motor vehicles under the Tariff Schedules [3] and are more specifically provided for under 727.06, TSUS, pursuant to paragraph 10(ij) of the General Headnotes and Rules of Interpretation, TSUS.

Item 727.06 TSUS, the provision for furniture designed for motor vehicle use, was not part of the tariff schedules as originally enacted in 1963. The provision was added by section 36 of the Tariff Schedules Technical Amendments Act of 1965, Pub. L. No. 89-241, § 36(1), 79 Stat. 933, 941.[4] The legislative history of item 727.06, TSUS, reflects that Congress intended the scope of that provision to cover those articles that would have been classified as automotive parts under paragraph 369(c) of the Tariff Act of 1980. The House Report attending passage of the Technical Amendments Act, in part, states as follows:

> *(l) Furniture designed for motor vehicle use.*—The furniture covered by the amendment made by subsection (*l*) of section 3[6] consists primarily of *seats and parts of seats designed for motor vehicles. Under the former tariff schedules such articles were generally classified as auto parts under paragraph 369(c) at 8½ percent ad valorem.* Under the new schedules these articles are classified as furniture and parts at rates ranging from 12½ percent ad valorem to 35 percent ad valorem depending on the component of chief value.

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[3] Defendant contends that since this is not a case where one of two competing provisions is more specific but rather whether the merchandise is described at all by TSUS item 727.06, defendant asserts the question turns on whether the term "motor vehicle" as used in TSUS item 727.06 includes tractors. This court does not agree that whether a tractor can be called a motor vehicle is determinative, nor is it persuaded that a tractor is a motor vehicle within the meaning of item 727.06, TSUS. As is pointed out in the *Tariff Classification Study*, "tractors are mobile power units used for many purposes, including agricultural, construction, road building, etc." United States Tariff Commission, *Tariff Classification Study, Schedule 6*, at 325 (1960).

[4] The new item 727.06 was one of several provisions relating to automobile parts that was added by public law 89-241. Some of the other added provisions were: (1) a new item 647.01, which was added by section 36(a) to provide for hinges, fittings, and mountings, designed for motor vehicles; and, (2) item 683.65, which was added by section 36(h) providing for electric lighting equipment designed for motor vehicles.

> Subsection (*l*) of section 3[6] would establish new item 727.06 and apply to these articles *the same rate that was formerly applicable (8.5 percent ad valorem).*

H.R. Rep. No. 342, 89th Cong., 1st Sess. 26–27 (1965) (emphasis added).

When Congress enacted the provision for furniture designed for motor vehicle use, it attempted to correct a situation where furniture and parts were being classified "at rates ranging from 12½ percent ad valorem to 35 percent ad valorem." *Id.* at 27. Item 727.06 "restores a rate of 8.5 percent (instead of the various higher rates which would apply to the specific pieces of furniture)." S. Rep. No. 530, 89th Cong., 1st Sess. 29 (1965), *reprinted in* 1965 *U.S. Code Cong. & Ad. News* 3416, 3444. Given that agricultural tractor parts were being imported duty free, this provision would not have restored any rates.

Furthermore, the Technical Amendments Act provisions discussed are remedial in nature. They were enacted in order to correct unintended and inequitable results in the original tariff schedules. In observing the remedial character of the provision, it was stated:

> [T]he Committee on Ways and Means was aware of the fact that the actual administration of the new tariff schedules very probably would bring to light unintended rate changes and other inadvertencies or oversights which would require corrective legislation. Shortly after the new schedules were placed in effect on August 31, 1963, the committee's attention was directed to several such instances. In an effort to treat with such matters on a comprehensive basis, the Ways and Means Committee, on December 13, 1963, invited all interested parties to make suggestions limited to those provisions of the tariff schedules wherein it appears that through oversight, inadvertencies, or lack of information, errors may have been made or clarifying language may be necessary.
>
> * * * In other words, the Committee directed its attention only to the correction of provisions in the new tariff schedule which clearly involved errors arising from oversight, inadvertence or lack of information or which required clarification.
>
> * * * * * * *
>
> Certain of the changes that would be effected by the bill will result in duty increases, others will bring about decreases in duty, and others will result in no change of duty at all. *But I want to make it crystal clear that none of the changes involve new tariffmaking.* On the contrary, the increases or decreases in duty rates provided for in H.R. 7969 are for the purpose of eliminating those instances of tariffmaking that inadvertently crept into the new tariff schedules.

111 *Cong. Rec.* H10,599 (daily ed. May 17, 1965) (statement of Rep. Mills) (emphasis added). In addition to the noted legislative history, Congress has traditionally accorded agricultural equipment prefer-

ential treatment. It has long been established that "the tariff provisions for agricultural implements should be liberally construed so that the evident intent of Congress to benefit agriculture [can] be effected." *F. W. Myers & Co.* v. *United States,* 59 Cust. Ct. 445, 450 (1967); *see United States* v. *American Express Co.,* 12 Ct. Cust. Appls. 483, 486 (1925).

A basic rule of statutory construction is to give effect to the intent of the legislature. *Sandoz Chemical Works, Inc.* v. *United States,* 43 CCPA 152, 156 (1956). In the case at hand, the legislative history reveals that tractor seat suspensions are not within the intended scope of item 727.06, TSUS. Although the defendant enjoys a presumption of correctness with regard to Customs' classification of imports, 28 U.S.C. § 2639 (Supp. V 1981), plaintiff has met its burden of proof in this case. Defendant's classification of the merchandise under item 727.06, TSUS, is erroneous and plaintiff's suggested classification under item 692.34, TSUS, is correct.

Therefore, for the above mentioned reasons, plaintiff's motion for judgment on the pleadings is granted and defendant's cross-motion for summary judgment is denied.

(Slip Op. 84-25)

NOSS COMPANY, PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 81-9-01291

Before: CARMAN, *Judge.*

MEMORANDUM OPINION AND ORDER

[Judgment for Defendant.]

(Dated March 26, 1984)

Sandler & Travis (Mark D. Crames at the trial and on the memoranda) for the plaintiff.

Richard K. Willard, Acting Assistant Attorney General; *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office; *(Kenneth N. Wolf* at the trial and on the memoranda) for the defendant.

CARMAN, *Judge:* The plaintiff in this action contests the classification by the United States Customs Service (Customs) of a certain device, invoiced as a centrifugal cleaner and known as a Radiclone, which is used for treating pulp in the papermaking process. Both plaintiff's position and defendant's position in this case are supported and with merit. The defendant, however, prevails since its claimed classification under item 661.95 is sustainable and is given precedence by virtue of headnote 1 of Schedule 6, part 4, subpart A, TSUS.[1]

---

[1] TSUS, schedule 6, part 4, subpart A, headnote 1 provides:
A machine or appliance which is described in this subpart and also is described elsewhere in this part is classifiable in this subpart.
Id.

The subject merchandise was entered at the port of Charleston, South Carolina, on January 8, 1981, and was liquidated on February 11, 1981. Plaintiff filed a timely protest with Customs which was denied on June 16, 1981. Jurisdiction in this court exists pursuant to 28 U.S.C. § 1581(a) (Supp. V 1981).

Customs originally classified the Radiclone under Item 668.04 of the Tariff Schedules of the United States (TSUS), which provides:

> Machines for making cellulosic pulp, paper, or paperboard; machines for processing or finishing pulp, paper, or paperboard, or making them up into articles:
>
> * * * * * * *
>
> Parts of the foregoing machines:
> Bed plates, roll bars, and other stock-treating parts for pulp or paper machines..... 6.4% ad val.

In its amended answer, however, the defendant admitted that the above-quoted classification was erroneous. That classification, therefore, was abandoned. In the alternative, defendant here seeks to demonstrate that the imported merchandise properly is classifiable under item 661.95, TSUS, and dutiable at the rate of 5.1 percent ad valorem. Item 661.95 reads in part:

> Centrifuges; filtering and purifying machinery and apparatus (other than filter funnels, milk strainers, and similar articles), for liquids or gases; all the foregoing and parts thereof (con.):
>
> Other * * *.

The plaintiff maintains that the Radiclone should be classified under Item 668.00, TSUS, which states in part:

> Machines for making cellulosic pulp, paper, or paperboard; machines for processing or finishing pulp, paper, or paperboard, or making them into articles:
>
> Machines for making cellulosic pulp, paper, or paperboard. 2.6% ad val.

Plaintiff also alternatively claims that if the Radiclone is an unfinished machine, it is classifiable under item 668.00 pursuant to Rule 10(h) of the General Headnotes and Rules of Interpretation, TSUS. The parties also have agreed that if the Radiclone is provided for in both items 661.95 and 668.00, then pursuant to schedule 6, part 4, subpart A, headnote 1, TSUS, the Radiclone is classifiable under item 661.95.[2]

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[2] At the trial, three witnesses were called, two for plaintiff and one for defendant. Nine exhibits were received in evidence on behalf of the plaintiff, while 10 were received on behalf of defendant. The exhibits consisted of photographs, flowcharts, and various diagrams illustrating the use of the Radiclone.

The Radiclone is a device that aids in removing contaminants from pulp and paper stock, a function vital to the process of transforming timber into paper. Typically, logs entering a paper mill are first debarked and placed into a "chipper" which cuts and chops the wood into smaller pieces. At this point, at least in the chemical pulping process, these wood chips are introduced into a device known as a "digester" which, operating at high temperatures and pressures, combines the wood chips with certain chemicals. This process has the effect of removing some of the "lignin" from the wool fibers; the lignin is the "glue" that gives the fibers their adhesive quality. The net result of the digesting process is that the wood becomes a pumpable "slurry" suitable for further processing. At this point, the slurry contains many contaminants ranging from sand and rocks to bottle caps and plastic cups. Various screens are used to remove these larger and more coarse impurities.

After the screening processes, only the smaller and lighter of the original contaminants remain. It is at this point that the Radiclone is employed. Most of the larger and hevier of the remaining contaminants are removed by use of the Radiclone. The pulp slurry, now rid of most of its original impurities, continues in the process through the drying and pressing stages. *See generally* Transcript, at 29–36; Plaintiff's Exhibit 5.

The Radiclone itself actually is a canister-like structure. Its essential feature is the cyclones, also called hydrocyclones, which are arranged radially within the Radiclone.[3]

It is important to note at the outset that the original classification under item 668.04 has been abandoned as erroneous by defendant. The customary presumption of correctness, therefore, has been lost. *United States* v. *Magnus, Mabee & Reynard, Inc.*, 39 CCPA 1, 7 (1951). It is nevertheless incumbent upon the plaintiff, however, to demonstrate "a factual and legal situation which would enable the courts to determine whether * * * [its] claims * * * should be sustained." *Id.* It is also important to emphasize that, according to the subpart headnote mentioned earlier, "[a] machine or appliance which is described in this subpart and is also described elsewhere in this part is classifiable in this subpart." The defendant, therefore, receives the benefit of this interpretative guide. Turning first, then, to the plaintiff's proposed classification under item 668.00, it is apparent that the Radiclone is described by that provision save for the word "machine." The parties, therefore, presented extensive evidence at the trial going to the issue of whether the Radiclone is a machine.

[3] Plaintiff's exhibit 3 is a typical hydrocyclone. It is a cone-shaped object, about 23 inches long, and made out of a durable plastic. The hydrocyclone has four openings. Two tangential openings near the apex serve as the stock inlets through which the impure slurry enters. The opening at the bottom serves as the rejects outlet. The hydrocyclones perform their function based on centrifugal force. The pulp slurry, combined with water, is pumped into the hydrocyclones through the tangential outlets. The effect is a spiral within a spiral as one product moves radially outward due to the centrifugal acceleration while the other products move radially inward due to corresponding drag forces. The centrifugal forces normally are greater; therefore, the impurities move radially outwards and exit the hydrocyclones through the rejects outlet. *See* Transcript, at 40–41.

No precise definition of the term "machine" can be offered and applied with regularity. Indeed, the Court of Appeals has stated that there has been no " 'judicial determination' of what a machine is." *United States* v. *IDL Mfg. & Sales Corp.*, 48 CCPA 17, 23 (1960). An early decision by the United States Court of Customs Appeals, however, described the basic attributes of machines and this description has withstood the test of time. In *Simon, Buhler & Bavmann (Inc.)* v. *United States*, 8 Ct. Cust. Appls. 273 (1918), the court offered the following guidance pertaining to what a machine is:

> [A] mechanical contrivance for utilizing, applying, or modifying energy or force or for the transmission of motion.

Id. at 277. The presence of moving parts has also been found to be an important attribute of machines. *See N.D. Cunningham & Co.* v. *United States*, 55 Cust. Ct. 220, 224 (1965).

Plaintiff claims that the Radiclone utilizes energy by modifying force and speed, thereby creating centrifugal forces. Further, plaintiff maintains that the hydrocyclones transmit motion through the use of the tangential inlets and pressure differentials created within each hydrocyclone. Also, citing C.S.D. 81-89, 15 Cust. Bull. 913 (1980), plaintiff claims that the Radiclone converts energy from one form to another and performs work. Plaintiff also claims the Radiclone has moving parts, namely a vacuum breaker and the hydrocyclones themselves.

It would appear that the Radiclone converts energy from one form to another; namely, from pressure to kinetic by modifying the force and speed of the liquid. Further, the Radiclone performs work since it removes impurities from the pulp slurry. It is also apparent that the Radiclone possesses a moving part, a vacuum breaker, essential to the continued operation of the unit.

More problematic for plaintiff are the questions of whether the Radiclone utilizes, applies or modifies energy or force and whether it transmits motion. A prior decision of this court, in *Hagan Corp.* v. *United States*, 43 Cust. Ct. 282 (1959), would appear to weigh heavily against plaintiff's position. At issue in *Hagen* was the proper classification of a "centrifugal separating machine." The function of the device was to separate dust particles from a gas stream. Centrifugal forces were used to collect the dust particles. Both the operation of the units as well as the use of external force appear similar to the Radiclone's operation, yet the court found that the device did not utilize, apply or modify energy or force and did not transmit motion. *Id.* at 286. The court, however, stated that its view was premised on the record presented in the case. The exhibits and testimony failed to convince the court that the dust collector was a machine in a "tariff sense." Further, the court restated a proposition essential to the instant matter: "[T]ariff acts are not drawn in the terms of science, but in those of commerce, presumptively the language in common use." *Id.* at 285 (citing *Meyer*

& Lange v. *United States,* 8 Ct. Cust. Appls. 181, 182 (1915)). In the case at bar, plaintiff has sufficiently demonstrated that the Radiclone is considered a machine in the papermaking industry. Planitiff's witnesses testified that in their view the Radiclone is a machine and, they stated that the papermaking industry considers the Radiclone a machine. Furthermore, a text recognized by all three witnesses as authoritative in the papermaking field specifically refers to the Radiclone as a machine. *See* Ingraham & Forslind, *Auxiliary Apparatus and Operations Preliminary to Paper Machines,* In 3 *Papermaking and Paperboard Making* 218–227 (R. Macdonald & J. Franklin 2d ed. 1970) "In another type of centrifugal, the machine is stationary and the centrifugal force is created from outside the machine by a pump or other means.").

Defendant has alleged classification of the Radiclone under Item 661.95, TSUS, which covers "centrifuges, filtering and purifying machinery and apparatus * * * for liquids or gases." If the Radiclone is also classifiable under item 661.95, then by operation of schedule 6, part 4, subpart A, headnote 1, TSUS, such classification would prevail over that claimed by plaintiff.

Plaintiff claims the Radiclone is not classifiable under item 661.95 because that provision covers apparatus that filter and purify. Plaintiff maintains the Radiclone does not purify since it does not rid the pulp slurry of all its impurities. Further, plaintiff states that the "and" between "filtering and purifying" in item 661.95 must be read in the conjunctive. In plaintiff's view, therefore, the Radiclone, even if it does purify, does not both filter and purify. In this connection, plaintiff adds that the Radiclone does not filter in the tariff sense because screens are not employed. Additionally, plaintiff challenges defendant's claimed classification because item 661.95 provides for the filtering and purifying of liquids or gases. It is plaintiff's contention that the Radiclone treats only the solid pulp, not the water in which the pulp is suspended.

Defendant counters that the Radiclone does indeed purify since it extracts pollutants or contaminants. Further, defendant claims the "and" referred to above must be read in the disjunctive. Lastly, defendant urges that the Radiclone treats a liquid within the meaning of item 661.95.

Turning first to plaintiff's assertion that the Radiclone does not purify, the court notes the definition of "purify" in several lexicographic sources.

> [T]o make pure: as to clear from material defilement or imperfection; free from impurities or noxious matter * * *.
>
> *Webster's Third New International Dictionary* (1981).

> To free from admixture with foreign or vitiating elements; free from extraneous matter; make clear or pure * * *.
>
> *Funk & Wagnalls New Standard Dictionary of the English Language* (1941).

[T]o remove unwanted constituents from a substance.
McGraw-Hill Dictionary of Scientific and Technical Terms (2d ed. 1978).

Plaintiff correctly states that the Radiclone does not rid the pulp slurry of all its contaminants. The court cannot agree, however, that "purify" as used in item 661.95 requires that the Radiclone remove 100 percent of the impurities. Such a narrow interpretation would ignore the larger purpose of item 661.95, which is meant to cover apparatus that rid liquids or gases of impurities. It is apparent to the Court that few such devices work with perfection. Further, in the *Summary of Trade and Tariff Information,* Centrifuges and Filtering and Purifying Equipment (1984), hydrocyclones are specifically mentioned as filtering and purifying equipment. *See id.* at 11.

Plaintiff also challenges defendant's proposed classification because, in plaintiff's view, the Radiclone must both purify and filter to be classified under item 661.95. The parties agree that the Radiclone does not "filter" since that process involves the passage of the impure material over a porous surface (e.g., a screen).[4] The Radiclone uses centrifugal force to accomplish its purpose. Under item 661.95, however, the Radiclone need not purify and filter because the "and" must be read in the disjunctive. First, it is obvious that Congress meant "machinery and apparatus" to be read in the disjunctive. It is therefore highly unlikely that a similar "and" within the same phrase be read in the conjunctive. Further, in 3 *Explanatory Notes to the Brussels Nomenclature* § XIV (1969),[5] the explanatory note of item 661.95's parallel provision states: "(II) Machinery and Certain Apparatus for Filtering *or* Purifying Liquids or Gases." *See* id. at 1213 (emphasis added). Lastly "courts may construe the words 'and' and 'or' to have a meaning different from that arrived at by a strict grammatical construction, if by so doing the different provisions of the paragraph or act can be harmonized and anomalous results avoided. *Doughten Seed Co.* v. *United States,* 24 CCPA 258, 260 (1936). Particularly in light of the *Summary of Trade and Tariff Information* mentioned above, it is clear that Congress intended item 661.95 to encompass a general class of apparatus and machinery that have the effect of removing impurities from liquids or gases by various processes. Plaintiff's interpretation is too limited in light of such an intent.

Plaintiff's final contention is that the Radiclone does not treat a liquid as item 661.95 requires. The material that enters the Radiclone is in plaintiff's view, "a mixture of solids in water." Plaintiff attempted to show at trial that the Radiclone is designed to act on the solid pulp, not on the water in which it is suspended. This ar-

[4] The court notes that "purify" and "filter" can be used synonomously. *Funk & Wagnalls New Standard Dictionary of the English Language,* at 2013 (1941).

[5] Use of the Explanatory Notes to the Brussels Nomenclature has been sanctioned where an ambiguity exists in the TSUS provision. *See F.L. Smidth & Co.* v. *United States,* 56 CCPA 77,, 84, 409 F.2d 1369, 1375 (1969).

gument, however, is disingenuous. The material that enters the Radiclone is a liquid in every sense of the term. That the Radiclone acts on the pulp itself is a distinction without a difference. This sort of equipment is often referred to as "liquid-solid separators," and as the *Summary* points out, includes hydrocyclones. What enters the Radiclone is 99.5 percent water. To maintain that the Radiclone does not treat a liquid defies logic.

In sum, the court holds that item 661.95, TSUS, also describes the Radiclone. By operation of schedule 6, part 4, subpart A, headnote 1, TSUS, therefore, the defendant's claimed classification under item 661.95, TSUS must be, and hereby is, sustained.

Judgment shall enter accordingly.

(Slip Op. 84-26)

UNITED STATES STEEL CORPORATION, REPUBLIC STEEL CORPORATION, ET AL., PLAINTIFFS *v.* UNITED STATES OF AMERICA, ET AL., DEFENDANTS, and COMPANHIA SIDERURGICA PAULISTA, ET AL., DEFENDANTS-INTERVENORS

Consolidated Court No. 82-10-01361

Before WATSON, *Judge.*

UNITED STATES STEEL CORPORATION, REPUBLIC STEEL CORPORATION ET AL., PLAINTIFFS *v.* UNITED STATES OF AMERICA, ET AL., and COMPANHIA SIDERURGICA PAULISTA, ET AL., DEFENDANTS-INTERVENORS

Court No. 82-10-01361-S

UNITED STATES STEEL CORPORATION, PLAINTIFF *v.* UNITED STATES OF AMERICA, ET AL., DEFENDANTS and POHANG IRON & STEEL CO., LTD., ET AL., DEFENDANTS-INTERVENORS

Consolidated Court No. 83-01-00134

UNITED STATES STEEL CORPORATION, PLAINTIFF *v.* UNITED STATES OF AMERICA, ET AL., DEFENDANTS

Court No. 83-01-00134-S

UNITED STATES STEEL CORPORATION, REPUBLIC STEEL CORPORATION, ET AL., PLAINTIFFS *v.* UNITED STATES OF AMERICA, ET AL., DEFENDANTS

Court No. 83-01-00152-S

Supplemental Order on Motion for Voluntary Dismissal

In Slip Opinion 84-12, the Court granted plaintiffs' motion to voluntarily dismiss these actions and vacated the opinions previously

published in those actions. At the request for the Court, the defendant United States has compiled a list of the opinions affected, which list has been agreed to, or not objected to, by the other parties.

In the interests of accurate public knowledge of the exact identity of the opinions involved, the list of vacated opinions is as follows:

Slip Op.	
82–117	[4 CIT 257; 557 F. Supp. 590].
83–53	[5 CIT 244; 566 F. Supp. 1529].
83–59	[5 CIT 272].
83–65	[5 CIT 286].
83–73	[6 CIT —; 569 F. Supp. 864].
83–76	[6 CIT —; 569 F. Supp. 870].
83–79	[6 CIT —; 569 F. Supp. 874].
83–80	[6 CIT —; 7/28/83].
83–99	[6 CIT —; 10/7/83].
83–101	[6 CIT —; 10/11/83].
83–112	[6 CIT —; 11/3/83].
83–115	[6 CIT —; 11/9/83].
83–127	[6 CIT —; 12/7/83].
83–138	[6 CIT —; 12/22/83].

It should be noted that Slip Op. 83–127 remains in effect with respect to *Bethlehem Steel Corp.* v. *United States,* Court No. 82–10–01369, an action which is still pending in Court.

(Slip Op. 84–37)

PPG INDUSTRIES, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 82–3–00421

Before RESTANI, *Judge.*

Eugene L. Stewart, Esq., for plaintiff.

Richard K. Willard, Acting Assistant Attorney General, *Joseph I. Liebman,* Attorney in Charge, International Trade Field Office and *Jerry P. Wiskin, Esq.,* for defendant.

Opinion and Order

[Plaintiff's motion for summary judgment denied; Defendant's cross-motion motion for summary judgment granted.]

(Decided March 28, 1984)

RESTANI, *Judge:* Plaintiff in this action challenges the Customs Service's refusal to reliquidate the merchandise in issue, certain bipolar diaphragm electrolyzers ("electrolyzers") and parts thereof, from Italy which are used in the production of chlorine. This case

is before the court on the motion of plaintiff, PPG Industries, Inc. ("PPG") and the cross-motion of the Government for summary judgment. The subject merchandise was entered at the port of Pittsburgh, Pennsylvania in November of 1970, and liquidated in October of 1978.

At the time of entry, plaintiff did not claim duty-free treatment of the merchandise and did not file a Temporary Importation Bond ("TIB") in accordance with Schedule 8, Part 5C, Tariff Schedules of the United States ("TSUS"), and pursuant to 19 C.F.R. § 10.31 (1983). Upon liquidation, the United States Customs Service ("Customs") classified the merchandise under a dutiable item.

Plaintiff claims in this action that the merchandise was experimental in nature, was effectively destroyed and, consequently, was entitled to duty-free classification under item 864.30, TSUS.[1] Plaintiff argues that (1) Customs should have granted its claim for reliquidation under section 520(c)(1), Tariff Act of 1930, as amended, 19 U.S.C. § 1520(c)(1) since the merchandise covered by the subject entries was improperly classified due to a mistake of fact or other inadvertence not amounting to an error in the construction of law; or, in the alternative, (2) that the Customs Service should have granted its protest under 19 U.S.C. § 1514, since the merchandise covered by the subject entries was improperly classified. In so claiming, plaintiff seeks to have the merchandise entered under a TIB on a *nunc pro tunc* basis.

Defendant, in opposition, contends: (1) that plaintiff's claims for reliquidation under § 1520(c)(1) are untimely; (2) that there was no mistake of fact or inadvertent error made in the entry of plaintiff's merchandise remediable under § 1520(c)(1); and (3) that the merchandise is not qualified for classification under TSUS item 864.30 because plaintiff has not complied with the prerequisites for duty treatment.

The critical issue in this case is whether plaintiff is excused from complying with Headnotes 1 and 3, Part 5, Subpart C, Schedule 8, TSUS and 19 C.F.R. § 10.31. These provisions detail the bonding requirements necessary for duty-free treatment under TSUS item 864.30. The plaintiff's claim under § 1520(c)(1) fails since the court finds that plaintiff alleges, at most, an error in the construction of law. Because the plaintiff failed to file the bond required for duty-free treatment under 864.30, TSUS, the court finds no merit in plaintiff's alternate claim that the subject merchandise covered by the entries was improperly classified under a dutiable item. It is, therefore, unnecessary to reach the questions of whether or not the present merchandise was experimental and therefore qualified for free entry under item 864.30, and whether or not that merchandise was destroyed within the meaning of Headnote 3, Part 5, Subpart

[1] Item 864.30, TSUS, covers "Articles intended solely for testing, experimental, or review purposes, including plans, specifications, drawings, blue-prints, photographs, and similar articles for use in connection with experiments or for study * * *."

C, Schedule 8, TSUS.[2] As will be developed more fully *infra*, plaintiff's motion for summary judgment is denied; defendant's cross-motion is granted.

"In ruling on cross-motions for summary judgment, the court must determine if there exist any genuine issues of material fact and, if there are none, decide whether either party has demonstrated its entitlement to judgment as a matter of law." *American Motorists Insurance Co.* v. *United States*, 5 CIT —, Slip Op. 83-8 (February 1, 1983) *citing Carson M. Simon & Co.* v. *United States*, 3 CIT 4 (1982); *S. S. Kresge Co.* v. *United States*, 77 Cust. Ct. 154, 157, C.R.D. 76-6 (1976). On these cross-motions for summary judgment, each party has submitted a statement of allegedly undisputed material facts in compliance with Rule 56(i). Although the parties differ on a variety of points, these differences present no genuine issues of *material* facts which would require trial for the purpose of deciding these cross-motions.

The record reveals that the subject merchandise, two electrolyzers, are electrochemical cells used for the production of chlorine. They were jointly designed by PPG and Oronzio de Nora Impianti Elettrochimici ("de Nora"), the Italian manufacturer. The electrolyzers were constructed and tested in Italy, then disassembled for shipment to the United States for assembly and operation by PPG at its Natrium, West Virginia commercial facility.

Similar electrolyzers were imported by PPG and entered during a period from 1969 to 1973 at various ports for assembly and operation by PPG at several of its commercial facilities. Many of the entries covering this merchandise were involved in a predecessor suit instituted by PPG, which invoked 19 U.S.C. § 1520(c)(1) to request reliquidation and reclassification based upon an alleged mistake of fact and inadvertence resulting in the classification of the subject merchandise under a duty-bearing item instead of under 864.30, TSUS. *See PPG Industries, Inc.* v. *United States*, 4 CIT 143, Slip Op. 82-83 (October 5, 1982) (hereafter "*PPG I*"). In *PPG I*, the court dismissed the complaint because plaintiff had failed to bring to Customs' attention any information with sufficient particularity to allow remedial action under 19 U.S.C. § 1520(c)(1), and because plaintiff had failed to give timely notice to Customs as required by 19 U.S.C. § 1520(c)(1).

The electrolyzers in the present action, covered by consumption entry numbers 101367 and 101398, were entered on November 17, 1970 and November 19, 1970, respectively. PPG was the importer of record for the two entries.

Shortly before the importation of the subject merchandise, PPG's Manager of International Traffic, Mr. Lloyd W. Kempf ("Kempf" or "Mr. Kempf"), retained the firm of R. L. Swearer Company, a

[2] Because neither claim succeeds on its merits it is not necessary for the court to address the additional question of whether the protests filed by PPG five days after liquidation raise a timely claim for relief under § 1520(c)(1) as well as a timely challenge to classification of the subject articles under § 1514(a)(2).

licensed customhouse broker in Pittsburgh, Pennsylvania, to attend to the details of customs clearance. Mr. William J. Twigger ("Twigger" or "Mr. Twigger"), the owner of the licensed customhouse brokers firm retained by PPG, acting on behalf of PPG, caused to be prepared two consumption entries for customs clearance, which were submitted to Customs in November 1980. Mr. Twigger had a well-established relationship with PPG, as he had handled PPG's account since 1949.

Twigger used De Nora's commercial invoice to prepare the consumption entry which he submitted on behalf of PPG with other materials to Customs. The invoice stated "Experimental material," "NO CHARGE" and *"Value for Customs purposes only U.S. $5,100.00."* Based upon the above-described information and his long time experience and expertise in the customs area, Twigger entered the merchandise under item 661.70, TSUS, at 8.5 per cent.

Approximately two months after entry, on January 15, 1971, Kempf sent Twigger a letter in which he mentioned the experimental nature of the imported articles. Furthermore, Kempf stated his belief that the items should receive duty-free treatment and requested that Twigger work with Customs on the matter. Twigger filed the letter and did not notify Customs concerning the matter.

Neither Twigger nor Kempf, nor any other agent for PPG, notified Customs of any experimental use of the electrolyzers, mistake on the entry, or intention to enter the articles duty-free under item 864.30, TSUS, until January 8, 1976. Notwithstanding that in early July 1973 Mr. Kempf was in contact with the involved Customs import specialist, Mr. Michael Kutchak, concerning the subject merchandise, he failed to raise any issue concerning the experimental nature of the electrolyzers. On January 8, 1976, plaintiff's counsel raised for the first time with Customs the subject of PPG's possible entitlement to duty-free entry treatment under item 864.30, TSUS, based upon the alleged experimental nature of the merchandise, and the alleged destruction of the electrolyzers.

On October 20, 1978, Customs liquidated the subject entries under item 688.40, TSUS, at eight (8) per cent *ad valorem.* On October 25, 1978, PPG filed protests numbered 1104–8–000010 and 1104–8–000011 as well as "Applications for Further Review" with the District Director at Philadelphia.

In Ruling 061541, dated September 12, 1980, Customs rejected PPG's claim for reliquidation under section 1520(c).[3] That ruling held, *inter alia,* that "[i]f the broker failed to note documentary evidence on file that should have alerted him to the possibility of duty-free entry under item 864.39, TSUS, this omission can only be characterized as negligent inaction or ignorance of a provision of law. Errors of this kind are excluded from relief under section 520(c)(1)." Customs Ruling 061541 at 2 (September 12, 1980). The

[3] PPG sought reconsideration of this decision and Customs again rejected the request by letter Ruling 542609 on January 8, 1982, which incorporated the reasons set forth in Ruling 0615541.

Customs ruling continued: "[t]he importer's ignorance or unawareness of item 864.30, TSUS, for whatever reason, is likewise an error of law, excluded from relief under section 520(c)(1)." *Id.* The ruling also held that:

> [i]n the instant case, the fact that the merchandise was experimental was known to the importer and should have been known by the broker from information given to him. Their failure to realize the legal significance of the experimental nature of the merchandise was an error of law, not correctable under section 520(c)(1).
>
> *Id.*

Plaintiff instituted this suit on March 27, 1982.

Section 520(c) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1520(c)(1) [4] provides in pertinent part as follows:

> (c) Notwithstanding a valid protest was not filed, the appropriate customs officer may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to correct—
>
> (1) a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, or other customs transaction, when the error, mistake, or other inadvertence is brought to the attention of the appropriate customs officer within one year after the date of liquidation or exaction
>
> * * *

19 U.S.C. § 1520(c)(1) (1982).

It is clear that a successful § 1520(c)(1) claim would entitle plaintiff to validly file the required bond at a later time than that provided for entries which do not involve clerical error, mistake of fact, or other inadvertence within the meaning of § 1520(c)(1). 19 C.F.R. § 10.31(g);[5] *see also C. J. Tower & Sons of Buffalo, Inc.* v. *United States,* 68 Cust. Ct. 17, 336 F.Supp. 1395 (1972), *aff'd,* 61 CCPA 90,499 F.2d 1277 (1974). The question therefore becomes whether plaintiff has presented a situation in which this court can conclude that clerical error, mistake of fact or other inadvertence within the meaning of § 1520(c)(1) has occurred.

Section 1520(c)(1) is not remedial for *every* conceivable form of mistake or inadvertence adverse to an importer, but rather the statute offers "limited relief in the situations defined therein." *Godchaux-Henderson Sugar Co., Inc.* v. *United States,* 85 Cust. Ct.

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[4] The differences between this provision and the statute as it read in 1970 are irrelevant here.

[5] Section 10.31(g) of Title 19 provides in relevant part as follows:

> Claim for entry under Schedule 8, Part 5C, Tariff Schedules of the United States may be made for articles of any character described therein which have been previously entered under any other provision of law and the entry amended accordingly upon compliance with the requirements of this section * * *, even though released from Customs custody if it is established that the original entry was made on the basis of clerical error, mistake of fact, or other inadvertence within the meaning of section 520(c)(1), Tariff Act of 1930, as amended, and was brought to the attention of the Customs Service within the time limits of that section.

19 C.F.R. § 10.31(g) (1983).

68, 496 F.Supp. 1326, 1331 (1980) *citing Phillips Petroleum Company* v. *United States,* 54 CCPA 7, 11 (1966); *accord C. J. Tower & Sons of Buffalo* v. *United States, supra.*

"A 'mistake of fact exists where a person understands the facts to be other than they are, whereas *a mistake of law exists where a person knows the facts as they really are but has a mistaken belief as to the legal consequences of those facts.*' " *Hambro Automotive Corp.* v. *United States,* 66 CCPA 113, 118, 603 F.2d 850, 853 (1979) *citing* 58 C.J.S. *Mistake,* § 832. "It has been defined as a mistake which takes place when some fact which indeed exists, is unknown, or a fact which is thought to exist, in reality does not exist * * *." *Hambro Automotive Corp.* v. *United States, supra* at 118 *citing* Pomeroy, Equity Jurisprudence § 839 (1941). A Treasury Decision defines mistake of fact as follows:

> *Mistake of fact* occurs when a person believes the facts to be other than they really are and takes some action based on that erroneous belief. The reason for the belief may be that a fact exists but is unknown to the person or he may be convinced that something is a fact when in reality it is not. For example, an importer's agent may be convinced that the importer wishes him to make a consumption entry for goods and he does so. The true fact is that the importer desired an in-bond entry to be made in the particular case. If the true facts had been known to the agent, an in-bond entry would have been filed.
>
> 94 Treas. Dec. 244, 245–46, T.D. 54848 (1959).

An error in the construction of the law, on the other hand, which should be considered in relation to the alleged mistake of fact,[6] was defined in the same Treasury Decision as follows:

> *Error in the construction of a law* occurs when a person knows the true facts of a case *but has a mistaken belief of the legal consequences of those facts and acts on that mistaken belief.* For example, the exact physical properties of certain merchandise and all other pertinent facts for classification of that merchandise are known. In applying the law the merchandise is classified as an entirety but it should have been classified as separate articles. Or the claim is made that an appraiser acts on incomplete information but the appraiser concludes he would have acted in the same way even if the missing information had been before him. If the appraiser errs in such a case, he commits error of law.
>
> *Id.* (emphasis supplied).

Inadvertence, on the other hand, has been defined variously as an oversight or involuntary accident, or the result of inattention or carelessness, and even as a type of mistake. *C. J. Tower & Sons of*

[6] "A mistake of fact is any mistake except a mistake of law." *C. J. Tower & Sons of Buffalo, Inc.* v. *United States, supra* 336 F. Supp at 1399.

Buffalo, Inc. v. *United States, supra; see also Hambro Automotive Corp.* v. *United States, supra* 66 CCPA at 118.

A clerical error is a mistake made by a clerk or other subordinate, upon whom devolves no duty to exercise judgment, in writing or copying the figures or in exercising his intention. *S. Yamada* v. *United States,* 26 CCPA 89 (1938); *Geo. Wm. Rueff, Inc.* v. *United States,* 41 Cust. Ct. 399, Abs. No. 62433 (1958); *Import Export Service of N.J., et al.* v. *United States,* 38 Cust. Ct. 235, C.D. 1869 (1957).[7]

The case presented is not one involving clerical error or inadvertence. As to clerical error, any alleged error in this matter can hardly be construed as clerical in nature because Mr. Twigger exercised judgment and intention when he entered the subject merchandise. The court also rejects any claim of inadvertence, since its application to the facts of this case would require an overly broad reading of that term. This case does not involve mere carelessness, a slip of the pen or an accidental failure to attach a document.

Consequently, plaintiff's entitlement to the relief requested depends upon whether the mistake alleged is of fact or, rather, is in the construction of a law within the meaning of § 1520(c)(1).

Under section 1520(c)(1) three conditions must be satisfied before the appropriate Customs officer is authorized to reliquidate an entry to correct a "mistake of fact" (paraphrasing):

> (1) A mistake of fact must exist;
> (2) The mistake of fact must be manifest from the record or established by documentary evidence; and
> (3) The mistake of fact must be brought to the attention of the Customs Service within the time requirements of the statute.

As to the first requirement, plaintiff relies heavily upon the case of *C. J. Tower & Sons of Buffalo, Inc.* v. *United States, supra,* for the proposition that the present case involves a mistake of fact. The *Tower* case involved the importation of certain war materials purchased abroad. In that case, both parties conceded that neither the district director nor the importer were aware of the nature of the materials which gave rise to eligibility for duty-free treatment, until after liquidations became final.

The court in *PPG I* considered this issue. *See* discussion, *supra* pp. 4–5. *PPG I* was decided on the issues of timeliness and sufficiency of the request for reliquidation under § 1520(c)(1), issues which we do not decide here. Although all other statements are

[7] Clerical error has commonly been found where mistakes were made in copying or typing figures or where figures have been transposed. *See, e.g., Howard Rapaport, D.B.A. The In-Novo Engineering and Development Co.* v. *United States,* 4 CIT —, Slip Op. 82-104 (November 17, 1982); *see also Louis Aisenstein & Bros., Inc.* v. *United States,* 34 Cust. Ct. 268, Abs. No. 58715 (1955); *B. A. McKenzie & Co., Inc.* v. *United States,* 44 Cust. Ct. 491, Abs. No. 64252 (1960); *N. M. Albert Co., Inc.* v. *United States,* 34 Cust. Ct. 102, C.D. 1686 (1955); *S. Jackson & Son, Inc.* v. *United States,* 40 Cust. Ct. 511, Abs. No. 61794 (1958); *Charles Neidert* v. *United States,* 30 Cust. Ct 445, Abs. No. 57306 (1953); *Lansen-Naeve Corp.* v. *United States,* 15 Cust. Ct. 329, Abs. No. 50708 (1945).

dicta,[8] *we are persuaded by the court's reasoning, as well as the particular relevance which such dicta* carries with it based upon identical issues, operative facts, parties, and nearly identical subjects of import.

In *PPG I,* the court stated:

> In *Tower* the remediable mistake was the lack of knowledge on the part of the importer until after liquidation that the subject merchandise was in fact to be used as emergency war material, which was duty free.
>
> Any mistake which might have been made in the instant action was qualitatively different from the mistake in *Tower* * * * [In that case] the plaintiff-importer was mistaken as to the use to which his merchandise would be put. In the instant action the plaintiff was under no such misapprehension. The company officials admitted knowing the intended use to which the subject merchandise would be placed.

Id. at 7.

The key distinction between *Tower* and this case is a temporal one. The importer in *Tower* was unaware of the nature of the materials being imported prior to liquidation. Therefore, he doubtlessly was unable to enter them properly free of duty at the time of entry. In contrast, plaintiff PPG was aware of the nature of its subject imports at all times prior to entry and liquidation, and the *only* knowledge which PPG lacked was of the pertinent duty-free entry provisions and requirements relating to TSUS item 864.30.

In *PPG I,* the court stated further that "[t]he mistake alleged by plaintiff is similar to the mistake of law found in *Hambro Automotive Corp.* v. *United States,* 66 CCPA 113, 603 F.2d 850 (1979). There the exporter knew the facts regarding its cost of production but erred in the assessment of those costs under the applicable law." *Id.*

The *Hambro Automotive* case is the leading authority on the distinction between a mistake of fact and an error in the construction of a law. In that case, the error which the plaintiff sought to correct consisted of the manufacturer's use of general expenses and profits in the home market rather than those of the export market in the cost of production figures it supplied to Customs. The plaintiff in *Hambro* explained this mistake as a misunderstanding of American accounting terms and expressions. However, the court in *Hambro* stated:

> However it is expressed the mistakes which were made must be considered as being, in essence, misunderstandings of the law, namely, the law governing cost of production * * * The mistakes were interpretational and decisional. They were not the careless mistakes in routine office tasks, the consequences

[8] Only the holding of a case is entitled to recognition and respect as binding authority. *Dictum,* however, may be considered persuasive authority. *See* Re, *Stare Decisis* 79 F.R.D. 509, 512.

of which section 520(c)(1) was intended to alleviate. *See Morimura Bros.* v. *United States,* 160 F.280 (1908). *See also S. Yamada* v. *United States,* 26 CCPA 89, T.D. 49628 (1938).

Hambro Automotive Corp. v. *United States,* 81 Cust. Ct. 29, 30–31, 458 F.Supp. 1220 (1978) (J. Watson), *aff'd,* 603 F.2d 850 (1979).

Similarly, in the present action, we must look to PPG's knowledge of the facts and how it intended to use them. It is clear that PPG was fully aware of the alleged experimental nature of the subject electrolyzers, but believed the legal consequences of entering them as they did to be other than they were. Plaintiff argues in its Memorandum of Points and Authorities in support of its motion for summary judgment at pages 14–15:

> While PPG, of course, knew the facts, its cognizant personnel did not know that Item 864.30, TSUS, existed.

Hence, we can draw no other conclusion but that no mistake of fact was involved in the present case, and that any "error" which occurred, if it occurred, amounted to an error in the construction of law or to ignorance of the law.

As to the second requirement, plaintiff has failed to establish, as it must, that any mistake of fact (not amounting to an error in the construction of the law) was manifest from the record or established by documentary evidence. Plaintiff has established the following. Before entry, Mr. Kempf believed that the subject articles were entitled to duty-free entry, of which he informed the customhouse broker, Mr. Twigger. Kempf's position was based upon a "belief that duty was normally assessed on products to protect American industry, and that no duty would be assessed on products where similar merchandise was not manufactured in the U.S." Kempf Affidavit at ¶7. This in itself was ignorance of the law or a mistake in the construction of the law. Had PPG's employee, Kempf, known the applicable law, or construed the law before it properly, he would have filed or caused to be filed the requisite bond and related special entry papers in order to entitle PPG to duty-free treatment of its goods. There is also nothing in the record to indicate that at the time of entry plaintiff intended to and was capable of meeting the requirements related to duty-free entry treatment.

Schedule 8, Part 5C, Headnote 1(a) provides as follows:

> The articles described in the provisions of this subpart, when not imported for sale or for sale on approval, may be admitted into the United States without the payment of duty, under bond for their exportation within 1 year from the date of importation, which period, in the discretion of the Secretary of the Treasury, may be extended, upon application, for one or more further periods which, when added to the initial 1 year, shall not exceed a total of 3 years * * *

Schedule 8, Part 5C, Headnote 3 provides the following:

> Upon satisfactory proof that any article admitted under item 864.30 has been destroyed because of its use for any purpose provided for therein, the obligation under the bond to export such article shall be treated as satisfied.

19 C.F.R. § 10.31 [9] sets forth in further detail the requirements associated with entry of articles brought into the United States temporarily and claimed to be exempt from duty under Schedule 8, Part 5C, TSUS. In particular, section 10.31(a)(3) states:

> (3) In addition to the data usually shown on a regular consumption entry summary, each temporary importation bond entry summary shall include:
>
> (i) The TSUS item number under which entry is claimed.
>
> (ii) A statement of the use to be made of the articles in sufficient detail to enable the district director to determine whether they are entitled to entry as claimed, and
>
> (iii) A declaration that the articles are not to be put to any other use and that they are not imported for sale or sale on approval.

In this case, while the subject articles were entered in 1970, and the entries were not liquidated until 1978, the plaintiff-importer failed until 1976 to notify Customs as to the experimental nature of the subject merchandise, much less as to an intention to seek eligibility for duty-free treatment under item 864.30, TSUS. It would be improper to permit plaintiff under § 1520(c)(1) to secure a TIB later than the regulations permit, based upon changed circumstances (*i.e.* unforeseen destruction or export of the merchandise) or changed intentions (later decision that it would have been more beneficial to have filed the TIB and received duty-free treatment and exported or destroyed). We believe that these concerns are particularly acute in a case such as this, in which a virtual laundry list of "inadvertences" or "mistakes" are alleged,[10] where the alleged error amounts to one in the construction of a law, and where the importer failed to do anything at all about the "error" for six years after entry.

Plaintiff's alternative claim is that, regardless of its failure to succeed in its request for relief under § 1520(c)(1), it is still entitled to relief because Customs should have granted its protest of improper classification as a matter of law under 19 U.S.C. § 1514. The court finds this claim to be equally without merit for the reason

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[9] There are no material differences between these regulations as they read at the time of entry and their form today.

[10] The more alleged mistakes and inadvertences the plantiff cites, the less plaintiff's § 1520(c)(1) claim seems plausible. Plantiff's list includes: Kempf's failure to raise the issues of mistake or experimental use to Customs, despite his contact with the import specialist personally involved with these entries who sought information concerning the value of the entries; Twigger, an experienced, licensed customhouse broker's failure to recognize the appropriate and applicable laws and their requirements regarding duty-free entry under item 864.30, TSUS, as well as Twigger's inaction in the face of a letter from his principal, PPG, which requested that he work with Customs on the duty-free issue.

that plaintiff failed to comply with mandatory regulations which, only when complied with, would entitle plaintiff to duty-free treatment under 864.30, TSUS.[11]

In *Border Brokerage Company* v. *United States*, 36 CCPA 83, C.A.D. 402 (1949), importers failed to comply with certain regulations prescribed by the Secretary of the Treasury, which required the filing of affidavits of intended and actual use of the merchandise as feedstuffs in order to obtain free entry. The court affirmed the Customs Court's dismissal of the importers' protests. Likewise, in *International Forwarding Co.* v. *United States*, 9 Cust. Ct. 428 (1942), due to ignorance of the law an importer failed to file certain documents relating to tax exemption. The entry was liquidated dutiable as entered. Some time later, the importer discovered that, had a shipper's declaration been filed in connection with the entry, in accordance with T.D. 49643 certain portions of the merchandise would have been entitled to exemption from the tax imposed by the revenue act. The court denied its claim to duty-free entry treatment.[12]

In the present action there is no dispute that the plaintiff did not secure the required bond (TIB), nor did plaintiff file numerous other assorted documents which are specially required for free entry treatment. Because the plaintiff failed to comply with the pertinent regulations, as well as with the terms of the Headnotes accompanying the claimed duty-free entry TSUS item, its classification claim fails as a matter of law. Accordingly, the plaintiff's motion for summary judgment is denied; the defendant's cross-motion is granted.

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[11] It is only success under § 1520(c) which will relieve plaintiff of the obligation to comply with bonding requirements at the time of entry. Outside of this provision, compliance, and consequently duty-free treatment, is impossible on a *nunc pro tunc* basis. 19 C.F.R. § 10.31(g).

[12] In this regard, *see also McDonnell Douglas Corp.* v. *United States*, 75 Cust. Ct. 6 (1975), *Atlantic Produce Company* v. *United States*, Abstract No. 57413 (1953), *McBride* v. *United States*, 1 Cust. App. 293, T.D. 31354, *aff'g.* T.D. 30164 and Abstract No. 22512, T.D. 30234 (1911), and *George L. Walsh* v. *United States*, 61 CCR 252, C.D. 3591 (1968).

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Abstracts
Protest Decisions

DEPARTMENT OF THE TREASURY, *March 29, 1984.*

nited States Court of International Trade at New York are fficers of the Customs and others concerned. Although the print in full, the summary herein given will be of assistance acing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSE
				Item No. and
P84/71	Rao, J. March 22, 1984	Caprice Handbag Inc.	79–5–00768	Item 656.25 25%, 23.1% 21.3%, 19.4 and 17.5%
P84/72	Landis, J. March 22, 1984	Nadel Trading Corp.	80–5–00797, etc.	Item 774.60 o 774.55 8.5% Item 774.45% 7.2%, 8.5%
P84/73	Ford, J. March 26, 1984	Formosa Plastics Group (USA) Inc.	81–11–01529	Item 355.81 6%
P84/74	Ford, J. March 26, 1984	Zayre Corp.	81–6–00686	Item 734.99 9%

SSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
No. and Rate	Item No. and Rate		
56.25 , 23.1%, %, 19.4% 17.5%	Item 745.68 8.5%, 8.1%, 7.7%, 7.3% and 6.9%	Agreed Statement of facts	New York Clasps or parts thereof
74.60 or 5 74.45% , 8.5%	Item 772.15 Free of duty pursuant to GSP	Agreed Statement of facts	New York "noddale flowers," product of eligible beneficiary country
55.81	Item A771.42 Free of duty pursuant to General Headnote 3(c)	U.S. v. Elbe Products Corp. (C.A.D. 1267)	Los Angeles Vinyl sponge leather, vinyl leather, etc.
34.99	Item 739.99 Free of duty pursuant to GSP	Agreed Statement of facts	Boston Ski gloves

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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION
R84/95	Ford, J. March 22, 1984	Allied International Inc.	83-11-01600	Cost of Production

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OF TION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
uction	Invoice unit values + agent's commission shown on entry papers but not including those additions for domestic insurance, inland freight, port expenses, and extra war risk insurance	Agreed statement of facts	Jacksonville Hardboard

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATIO
R84/96	Ford, J. March 23, 1984	Allied International Inc.	82-11-01490	Cost of product
R84/97	Ford, J. March 26, 1984	Allied International Inc.	81-11-01504-S	Cost of product
R84/98	Ford, J. March 26, 1984	Allied International Inc.	82-2-00202	Cost of product
R84/99	Re, C.J. March 27, 1984	Mitsui & Co.	75-7-01721	Export value

ASIS OF LUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
production	Invoice unit values + agent's commission shown on entry papers but not including those additions for domestic insurance, inland freight, port expenses, and extra war risk insurance	Agreed statement of facts	Boston Hardboard and birch plywood
production	Invoice unit values + agent's commission shown on entry papers but not including those additions for domestic insurance, inland freight, port expenses, and extra war risk insurance	Agreed statement of facts	Boston Birch plywood
production	Invoice unit values + agent's commission shown on entry papers but not including those additions for domestic insurance, inland freight, port expenses, and extra war risk insurance	Agreed statement of facts	Boston Hardboard and birch plywood
value	Various appraised values shown on entry papers less those additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	Miami Not stated

R84/100	Re, C.J. March 27, 1984	Mitsui & Co.	75-9-02261	Export value
R84/101	Re, C.J. March 28, 1984	Browining Metals Corp.	73-1-00186	Export value
R84/102	Re, C.J. March 28, 1984	Chori America, Inc.	74-5-01219	Export value
R84/103	Re, C.J. March 28, 1984	M. Hidary & Co.	74-6-01443	Export value
R83/104	Re, C.J. March 28, 1984	Starlight Trading	81-5-00617	Export value

value	Various appraised values shown on entry papers less those additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	Milwaukee Not stated
value	Various appraised values shown on entry papers less those additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	New York Not stated
value	Various appraised values shown on entry papers less those additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	Los Angeles; New York Not stated
value	Various appraised values shown on entry papers less those additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	New York Not stated
value	Various appraised values shown on entry papers less those additions included to reflect currency revaluation	C.B.S. Imports v. U.S. (C.D. 4739)	New York Not stated

Decisions of U.S. Court of Appeals for the Federal Circuit

APPEAL No. 84-605—United States Steel Corp./Republic Steel Corp., et al. v. United States—COUNTERVAILING DUTY PROCEEDINGS—TERMINATION OF COUNTERVAILING DUTY CLAIMS—PRELIMINARY DETERMINATIONS, Appeal from Slip Op. 83-101, filed November 3, 1983, dismissed March 14, 1984.

APPEAL No. 84-639—United States Steel Corporation v. United States—COUNTERVAILING DUTY PROCEEDINGS—TERMINATION OF COUNTERVAILING DUTY CLAIMS—PRELIMINARY DETERMINATIONS, Appeal from Slip Op. 83-76, filed on November 14, 1983, decided March 23, 1984.

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